(1)

Supreme Court, U.S.
FILED

02 837 NOV 27 2002

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

MORETON ROLLESTON, JR.,

Petitioner,

v.

ESTATE OF REBECCA WIGHT CHERRY SIMS,
JOHN RANDOLPH CHERRY, EXECUTOR,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT U.S.
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QUESTIONS PRESENTED FOR REVIEW

I.

The trial jury rendered a verdict against Petitioner for $5,100,000. The verdict specifically omitted an award of interest.

A month after the trial, the trial judge entered an order awarding interest of 12% on the judgment.

The award of interest changed the jury verdict and thereby violated Amendment Seven to the Constitution of the United States which guarantees a trial by jury.

The interest award also violated Official Code of Georgia §9-12-9.

LIST OF PARTIES

1. Moreton Rolleston, Jr.
2. Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor.

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PETITION FOR WRIT OF CERTIORARI

The Judge of the trial court materially, greatly and illegally changed the written verdict of the trial jury.

The jurisdiction of the Court to review the judgment of the Supreme Court of Georgia is invoked under 28 U.S.C. paragraph 1257.

Grounds for jurisdiction is violation of Amendment Seven to Constitution of United States.

STATEMENT OF CASE

In Civil Action case no. D-97003 Fulton Superior Court, State of Georgia a printed form for a verdict was given to the jury by the Court. The jury found "actual damages $5,100,000" Plus any interest "0". See Appendix A, page 1a. Date of verdict was March 22, 1995. The trial judge issued an order dated April 6, 1995 that changed the jury verdict by awarding interest on judgment at 12%. See Appendix B, page 3a.

ARGUMENT

Amendment Seven of United States Constitution guarantees trial by jury.

In this case the jury verdict of zero interest was changed by order of the trial judge when his order provided for 12% interest on the judgment. What a change! What a difference!

Georgia even has a statute prohibiting such a change to a jury verdict. Official Code of Georgia §9-12-9 reads as follows:

> "Judgment and execution shall conform to the verdict."

CONCLUSION

In this case the constitutional right of Petitioner to a jury trial was violated by the order of the trial judge.

Respectfully submitted,

MORETON ROLLESTON, JR.
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APPENDIX A

[Dated March 22, 1995]

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Civil Action – Case No. D-97003

ESTATE OF REBECCA WIGHT CHERRY SIMS,
JOHN RANDOLPH CHERRY, Executor

Plaintiff

vs

MORETON ROLLESTON, JR.

Defendant

VERDICT

We the jury find for the plaintiff and award damages as follows

1. Actual Damages	$5,100,000
plus any interest	$ 0
2. Expense of Litigation including attorneys fees	$100,000
Total	$5,200,000

We find that punitive damages should be awarded ( ) Yes (X) No.

OR

We the jury find for the defendant. ( )
This the 22nd day of March, 1995.

/s/ James A. Robbins, Jr.
FOREPERSON

APPENDIX B

[Filed April 7, 1995]

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Civil Action – File No. D97003

ESTATE OF REBECCA WIGHT CHERRY SIMS,
JOHN RANDOLPH CHERRY, Executor,

Plaintiff,

v.

MORETON ROLLESTON, JR.,

Defendant.

JUDGMENT ON JURY VERDICT

This action having come on for trial before the Court and a jury, the Honorable Isaac Jenrette, presiding, and the issues having been duly tried, and the jury having duly rendered its verdict (attached hereto as Exhibit "A"),

IT IS HEREBY ORDERED AND ADJUDGED

That the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall recover of the Defendant, Moreton Rolleston, Jr., the principal sum of FIVE MILLION ONE HUNDRED THOUSAND ($5,100,000.00) DOLLARS, plus expenses of litigation in the amount of ONE HUNDRED THOUSAND ($100,000.00) DOLLARS, together with the costs of this action and Judgment is hereby entered for said amount;

That the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor, shall recover of the Defendant, Moreton Rolleston, Jr., post-judgment interest thereon at the rate of twelve percent (12%) per annum as provided by law, on the principal sum of FIVE MILLION ONE HUNDRED THOUSAND ($5,-100,000.00) DOLLARS to the date of satisfaction of said principal sum and Judgment is hereby entered for said amount, and

Plaintiff filed its affidavit showing demand was made via certified mail on January 13, 1993 for unliquidated damages in the amount of One Million ($1,000,000.00) Dollars and Defendant having failed to satisfy said demand within the time required by O.C.G.A. §51-12-14, the Plaintiff, The Estate of Rebecca Wight Cherry Sims, John Randolph Cherry, Executor shall *** Rolleston, Jr. pre-judgment interest in the amount of Two-Hundred Fifty-Two Thousand Four Hundred Ninety-Three and 15/100 ($252,493.15) Dollars, pursuant to O.C.G.A. §51-12-14, said amount being interest at the rate of twelve percent ($12%) per annum running from thirty days after Plaintiff's unliquidated damages demand on January 13, 1993, to the date of Judgment on March 22, 1995. Judgment is hereby entered for said amount.

This 6th day of Apr 1995,

/s/ Isaac Jenrette
The Honorable Isaac Jenrette, Chief Judge
Fulton County Superior Court

Presented by:

/s/ Shelby A. Outlaw
SHELBY A. OUTLAW
Georgia State Bar No. 555740

/s/ Scott M. Kaye
SCOTT M. KAYE
Georgia State Bar No. 409310

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APPENDIX C

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: September 06, 2002

Moreton Rolleston, Jr.
2035 Garraux Road, N.W.
Atlanta, GA 30327

Case No. S02C1340

MORETON ROLLESTON, Jr., et al. v. ESTATE OF REBECCA WRIGHT CHERRY SIMS et al.

COURT OF APPEALS CASE NO. A02A0268

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Sherie M. Welch, Clerk

APPENDIX D

FOURTH DIVISION
SMITH, P.J.,
ELDRIDGE and ELLINGTON, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, December 14, 2000) http://www.appeals.courts.state.ga.us/rules.html

May 2 2002

NOT TO BE
OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A02A0268. ROLLESTON et al. v. ESTATE OF SIMS, JOHN SM-013 RANDOLPH CHERRY, Executor.

SMITH, Presiding Judge.

In this case, the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment;

(2) No reversible error of law appears and an opinion would have no precedential value,

(3) The judgment of the court below adequately explains the decision, and;

(4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Eldridge and Ellington, JJ., concur.